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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220411-0091]

RIN 0648-BL20

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2022

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures for the 2022 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for this fishery require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of this action is to set management measures that allow the recreational fisheries to achieve, but not exceed, the recreational harvest limits and thereby prevent overfishing of the summer flounder, scup, and black sea bass stocks.

DATES: Comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this document, identified by **NOAA-NMFS-2022-0042**, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter **NOAA-NMFS-2022-0042** in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281-9116.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage summer flounder, scup, and black sea bass. The Council and the Commission’s Management Boards meet jointly each year to recommend recreational management measures. Recreational management measures are required to be set so that recreational harvest achieves, but does not exceed, the recreational harvest limit (RHL). For summer flounder and black sea bass, we must implement coastwide measures or approve conservation-equivalent measures per 50 CFR

648.102(d) and 648.142(d), as soon as possible following the Council and Commission's recommendation. This action proposes establishing conservation equivalency for both species in 2022. For scup, the regulations require us to propose additional management measures if the measures recommended by the Council and Commission alone will not constrain harvest as needed. As such, we are proposing a Federal recreational closure because harvest is expected to exceed the 2022 RHL and the adjustments recommended by the Council and Commission alone will not achieve the necessary reduction.

Recreational Management Measures Process

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) establishes a Monitoring Committee consisting of representatives from the Commission, the Council, state marine fishery agencies from Massachusetts to North Carolina, and NMFS. The FMP's implementing regulations require the Monitoring Committee to review scientific and other relevant information annually. The objective of this review is to recommend management measures to the Council that will constrain landings within the RHL for the upcoming fishing year. The FMP restricts the options for management measures to minimum and maximum fish size limits, per angler possession limits, and timing of the fishing season.

The Council and the Board then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Council forwards its recommendations to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for summer flounder, scup, and black sea bass in the FMP and all applicable laws and Executive

Orders before ultimately implementing measures for Federal waters. Commission measures are final at the time they are adopted.

2022 Scup Recreational Management Measures

The current Federal recreational scup management measures are a 9-inch (22.86-cm) minimum fish size, a 50-fish per person possession limit, and a year-round open season. State measures are similar but vary slightly due to differences in scup availability. Recreational landings in 2020 were 12.91 million lb (5,855 mt), which was nearly twice the 2020 RHL of 6.51 million lb (2,952 mt). The 2022 RHL is 6.08 million lb (2,757 mt), and harvest projections indicate that a 56-percent reduction in catch would be needed to constrain harvest to the 2022 RHL.

The Council and Board proposed a 1-inch (2.54-cm) increase to the scup recreational minimum size in state and Federal waters for 2022. In Federal waters, this results in a 10-inch total length minimum size. Collectively, this change in both state and Federal waters is expected to achieve an approximate 33-percent reduction in harvest. This is less than the estimated 56-percent reduction in harvest needed to constrain recreational harvest to the 2022 RHL. Because the action proposed by the Council and Board would not sufficiently reduce scup harvest as required by the FMP, we are required by the regulations at 50 CFR 648.122(b) to propose additional measures to ensure the scup recreational annual catch limit is not exceeded. We are proposing a closure for Federal waters, which is the only management measure available that would result in any meaningful reduction in harvest, even though less than 6 percent, on average, of recreational scup catch comes from Federal waters, and a reduction in catch of an additional 23 percent is needed to achieve, but not exceed, the RHL. This closure

as proposed would apply to all recreational vessels fishing in Federal waters and all federally permitted for-hire vessels fishing in either state or Federal waters. While such a closure is not expected to achieve the full 23-percent reduction, we are required, per the FMP's implementing regulations, to propose additional management measures as the Council's and Commission's recommendations do not ensure that the recreational ACL would not be exceeded. Given the potential impacts of the closure we are seeking comments on additional or alternative measures that may also achieve the overarching objective of constraining harvest to the annual catch limit and preventing overfishing.

Summer Flounder and Black Sea Bass Conservation Equivalency

Under conservation equivalency, Federal recreational measures are waived and federally permitted party/charter vessels and all recreational vessels fishing in Federal waters are subject to the recreational fishing measures implemented by the state in which they land. This approach allows for more customized measures at a state or regional level that are likely to meet the needs of anglers in each area, compared to coastwide measures that may be advantageous to anglers in some areas and unnecessarily restrictive in others. The combination of state or regional measures must be "equivalent" in terms of conservation (*i.e.*, not expected to exceed the RHL) to a set of "non-preferred coastwide measures," which are recommended by the Council and the Board each year.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or that coastwide management measures be implemented to ensure that the RHL will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of non-preferred coastwide measures that would apply if conservation

equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation by the Commission that the proposed state or regional measures developed through its technical and policy review processes achieve conservation equivalency, NMFS may waive, for the duration of the fishing year, the permit condition found at 50 CFR 648.4(b) that requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder and black sea bass charter/party permit holders and individuals fishing for summer flounder and black sea bass in the exclusive economic zone (EEZ) are subject to the recreational fishing measures implemented by the state in which they land, rather than the coastwide measures. Conservation equivalency expires at the end of each fishing year (December 31).

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a management proposal to the Commission's Technical Committee or that submits measures that are not conservationally equivalent to the coastwide measures.

The development of conservation-equivalency measures happens at both the Commission and at the individual state level. The selection of appropriate data and analytical techniques for technical review of potential state conservation-equivalent measures and the process by which the Commission evaluates and recommends proposed conservation-equivalent measures are wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to

develop specific state or regional measures or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once the states and regions select their final 2022 summer flounder and black sea bass management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the submitted proposals, ultimately notifying NMFS as to which proposals have been approved or disapproved. NMFS has no overarching authority in the development of state or Commission management measures but is an equal participant along with all the member states in the review process. NMFS neither approves nor implements individual states' measures but retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters. The final combination of state and regional measures will be detailed in a letter from the Commission to the Regional Office certifying that the combination of state and regional measures have met the conservation objectives under Addendum XXXII to the Commission's Interstate FMP and are expected to constrain catch to the 2022 recreational harvest limit. NMFS will publish its determination on 2022 conservational equivalency as a final rule in the *Federal Register* following review of the Commission's determination and any other public comment on this proposed rule.

2022 Summer Flounder Recreational Management Measures

This action proposes adopting conservation equivalency for summer flounder in 2022, with regional measures expected to achieve, but not exceed, the 2022 RHL of 10.36 million lb (4,699 mt). Based on the analysis conducted by the Monitoring

Committee, the Council and Board recommended that recreational summer flounder measures can be liberalized, allowing for up to a 16.5-percent increase in recreational harvest.

For 2022, non-preferred coastwide measures approved by the Council and Board are a 18.5-inch (47-cm) minimum fish size, a 4-fish per person possession limit, and an open season from May 15-September 15. The only adjustment compared to 2021 is a decrease in the non-preferred minimum size from 19-inches to 18.5-inches (48.26-cm to 21.59-cm) total length. The coastwide measures become the default management measures in the subsequent fishing year, in this case 2023, until the joint process establishes either coastwide or conservation-equivalency measures for the next year.

The 2022 precautionary default measures recommended by the Council and Board are identical to those in place for 2021: A 20.0-inch (50.8-cm) minimum fish size; a 2-fish per person possession limit; and an open season of July 1-August 31, 2022. These measures may be assigned by the Commission if conservation equivalency is approved but a state or region does not submit a conservationally equivalent proposal.

2022 Black Sea Bass Recreational Management Measures

This action proposes adopting conservation equivalency for black sea bass in 2022, with regional measures expected to achieve, but not exceed, the 2022 RHL of 6.74 million lb (3,057 mt). To achieve but not exceeded the RHL, a harvest reduction of 20.7 percent is needed. Preliminary analysis suggested the need for a 28-percent reduction, but subsequent analyses conducted by the Technical Committee resulted in the Council and Board adopting a reduction target of 20.7 percent. Consistent with this required reduction, the Council and Board recommended the following coastwide measures: A

14-inch (35.56-cm) minimum size; a 5-fish possession limit; and an open season of May 15-October 8. The recommended precautionary default measures are a 16-inch (40.64-cm) minimum size, a 3-fish possession limit, and an open season of June 24-December 31.

Regulatory Requirements

The current regulations developed by the Mid-Atlantic Fishery Management Council for summer flounder, scup, and black sea bass require NMFS to implement recreational management measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The regulations do not provide flexibility to consider factors such as biomass or fishing mortality in the measure-setting process. Black sea bass and scup are at high levels of biomass, but projected recreational catch and harvest significantly exceeds the previously adopted ACLs and RHLs.

The current recreational management measure setting process was developed as part of the FMP by the Council in conjunction with the Board. We are required to act consistent with the regulations implementing the previously approved FMP. Absent Secretarial action, NMFS cannot change the process for setting recreational management measures, including the factors considered. We are required to propose recreational management measures (possession limit, size limit, and season) that are expected to achieve the recreational ACL. The Council and Board are currently considering changes to the recreational management process. Until the Council and Board take action to modify the FMP's underlying requirements relating to the setting of recreational management measures, we are required to propose recreational management measures

consistent with the FMP requirements and corresponding regulations.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures. According to the commercial ownership database, 361 for-hire affiliate firms generated revenues from recreational fishing for various species during the 2018-2020 period. All of those business affiliates are categorized as small businesses. For purposes of the Regulatory Flexibility Act, a for-hire recreational fishing business with receipts of up to \$11 million is considered a small entity. The 3-year average (2018-2020) combined gross receipts (all for-hire fishing activity combined) for these small entities was \$49,916,903, ranging from less than \$10,000 for 105 entities (lowest value \$46) to over \$1,000,000 for 8 entities (highest value \$3.6 million). Estimating what proportion of the overall revenues of these for-hire firms came from fishing activities for an individual species is not possible. Nevertheless, given the popularity of summer flounder, scup, and black sea bass as a recreational

species in the Mid-Atlantic and New England, revenues generated from these species are likely very important for many of these firms at certain times of the year.

For summer flounder and black sea bass, this proposed action would waive Federal measures in lieu of state measures designed to reach the 2022 harvest limits. For scup, this action proposes to close the Federal recreational scup fishery (zero possession), and increase the Federal minimum size from 9 to 10 inches (22.86 to 25.4 cm). The economic impacts of the proposed measures in this action will be affected in part by the specific set of measures implemented at the state level. The impacts are likely to vary by state, but 2022 state measures will likely be liberalized for summer flounder, and will be more restrictive for black sea bass and scup compared to 2018-2021.

The entities affected by this action include recreational for-hire operations holding federal summer flounder, scup, or black sea bass party/charter permits. For-hire revenues are impacted by a variety of factors, including regulations and demand for for-hire trips for summer flounder, scup, black sea bass, and other potential target species; weather; the economy; and other factors. In addition, under similar regulations, recreational harvest of these species is variable. Therefore, it is not possible to accurately quantify the economic impact of the summer flounder liberalization or the black sea bass or scup restrictions on for-hire revenues. However, it would generally be expected that for-hire revenues may slightly increase in 2022 in response to the summer flounder liberalization and slightly decrease in response to the black sea bass and scup restrictions, assuming all other factors that impact revenues are unchanged.

The proposed Federal scup closure would apply to all vessels fishing in Federal waters, and any Federal scup charter/party permit holder. Because for-hire revenues are

generated by trip sales and not harvest, and because scup generally not the primary, or only target species, during recreational trips, NMFS does not believe that the proposed closure would have a significant impact on for-hire revenues. Furthermore, impacts to Federal permit holders may be reduced if these vessels “drop” their Federal scup permit for the remainder of the fishing year, allowing them to continue to target and retain scup in state waters, in accordance with state regulations.

Therefore, although it is not possible to accurately quantify the economic impact of the summer flounder liberalization or the black sea bass or scup restrictions on for-hire revenues, it would generally be expected that for-hire revenues may slightly increase in 2022 in response to the summer flounder liberalization and slightly decrease in response to the black sea bass and scup restrictions, assuming all other factors that impact revenues are unchanged. As a result, this rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 11, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.104, revise paragraph (b) to read as follows:

§ 648.104 Summer flounder size requirements.

* * * * *

(b) *Party/charter permitted vessels and recreational fishery participants.* The minimum size for summer flounder is 18.5-inches (47 cm) total length for all vessels that do not qualify for a summer flounder moratorium permit under § 648.4(a)(3), and charter boats holding a summer flounder moratorium permit if fishing with more than three crew members, or party boats holding a summer flounder moratorium permit if fishing with passengers for hire or carrying more than five crew members, unless otherwise specified in the conservation equivalency regulations at § 648.107. If conservation equivalency is not in effect in any given year, possession of smaller (or larger, if applicable) summer flounder harvested from state waters is allowed for state-only permitted vessels when

transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

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3. In § 648.107, revise paragraph (a) introductory text to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2022 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

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4. In § 648.126, revise paragraph (b) to read as follows:

§ 648.126 Scup minimum fish sizes.

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(b) Party/Charter permitted vessels and recreational fishery participants. The minimum size for scup is 10 inches (25.4 cm) total length for all vessels that do not have a scup moratorium permit, or for party and charter vessels that are issued a scup moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

However, possession of smaller scup harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

* * * * *

5. Revise § 648.127 to read as follows:

§ 648.127 Scup recreational fishing season.

Fishermen and vessels that are not eligible for a scup moratorium permit under § 648.4(a)(6) may not possess scup. The recreational fishing season may be adjusted pursuant to the procedures in § 648.122. Non-federally scup permitted vessels abiding by state regulations may transit with scup harvested from state waters on board through the Block Island Sound Transit Area following the provisions outlined in § 648.131.

6. In § 648.128, revise paragraph (a) to read as follows:

§ 648.128 Scup possession restrictions.

(a) *Party/Charter and recreational possession limits.* No person shall possess scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122. However, possession of scup harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

* * * * *

7. In § 648.145, revise paragraph (a) to read as follows:

§ 648.145 Black sea bass possession limit.

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 5 black sea bass in, or harvested from, the EEZ per trip unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit, unless otherwise specified in the conservation equivalent measures described in § 648.151. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 5 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.150 and abide by state regulations.

8. Revise § 648.146 as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a black sea bass moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through October 8, unless otherwise specified in the conservation equivalent measures described in § 648.151 or unless this time period

is adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters outside of this season is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

9. In § 648.147, revise paragraph (b) to read as follows:

§ 648.147 Black sea bass size requirements.

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(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 14 inches (35.56 cm) total length for all vessels that do not qualify for a black sea bass moratorium permit, and for party boats holding a black sea bass moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a black sea bass moratorium permit, if fishing with more than three crew members, unless otherwise specified in the conservation equivalent measures as described in § 648.151. However, possession of smaller black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

10. Add § 648.151 to subpart I to read as follows:

§ 648.151 Black sea bass conservation equivalency.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2022 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a). This determination is based on a

recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting black sea bass in or from the EEZ and subject to the recreational fishing measures of this part, landing black sea bass in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, size limits and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a), respectively, due to the lack of, or the reversal of, a conservation-equivalent recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season – June 24 through December 31; minimum size - 16 inches (40.64 cm); and possession limit - 3 fish.